

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:96CV22-MU

FILED
CHARLOTTE, N.C.

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U.S. DISTRICT COURT
W. DIST. OF N.C.

In re

KOLORTEX CORPORATION

Debtor.

LINDA W. SIMPSON, UNITED STATES
BANKRUPTCY ADMINISTRATOR

Appellant,

vs.

RAYBURN, MOON & SMITH, P.A.

Appellee.

ORDER

95-30796

This matter is before the court upon the Bankruptcy Administrator's appeal from the Bankruptcy Court's order, filed January 12, 1996.

FACTUAL AND PROCEDURAL HISTORY

Appellee Rayburn, Moon & Smith ("Appellee") represented the Debtor in a voluntary bankruptcy proceeding which was filed under Chapter 11 of the United States Bankruptcy Code. On September 15, 1995, this case was converted to a proceeding under Chapter 7 of the Bankruptcy Code. Thereafter, on September 19, 1995, Appellee filed an application for attorneys' fees and expenses in the amount of \$44,018.61. The Bankruptcy Administrator and the Debtor objected to Appellee's application.

In November 1995, the Honorable Marvin R. Wooten conducted a hearing on Appellee's application for attorney's fees. In an order

dated December 27, 1995, Judge Wooten allowed the application as Chapter 11 expenses of administration. The Bankruptcy Administrator ("Appellant") now appeals from this order.

ANALYSIS

Appellant advances the following three arguments in support of its appeal: (1) 11 U.S.C. Section 330 precludes Appellee from receiving any compensation for services rendered after the date the Bankruptcy Court appointed a Chapter 11 trustee; (2) the Bankruptcy Court erred in admitting evidence of fee applications of entities unrelated to the application of Appellee; and (3) the Bankruptcy Court abused its discretion in allowing Appellee's application for attorneys' fees and expenses.

I. Standard of Review

A district court will not overturn the factual findings of a bankruptcy court unless such findings are clearly erroneous. F.R.B.P. 8013. However, a district court must conduct a de novo review of the legal conclusions of a bankruptcy court. In re Rape, 104 B.R. 741, 747 (W.D.N.C. 1989).

II. Compensation for Services Rendered Subsequent to Appointment of Chapter 11 Trustee

Appellant first contends that 11 U.S.C. Section 330(a) does not allow Appellee to receive any compensation after July 28, 1995 -- the date in which the Bankruptcy Court appointed a Chapter 11 trustee. Unfortunately for Appellant, it failed to raise this issue in its objection to Appellee's application for fees and expenses. Absent exceptional circumstances, an appellate court will not consider issues raised for the first time on appeal. See

Levy v. Kindred, 854 F.2d 682, 685 (4th Cir. 1988) (citation omitted); United States v. Chesapeake & Ohio Ry. Co., 215 F.2d 213, 216 (4th Cir. 1954) (citations omitted). Appellant has not demonstrated that any exceptional circumstances exist in this case. Consequently, the court will not consider Appellant's first argument.

III. Evidence of Other Fee Applications

Appellant claims that the Bankruptcy Court erred in admitting evidence of fee applications unrelated to Appellee's application. 11 U.S.C. Section 330(a), as amended in 1994, authorizes "reasonable compensation for actual, necessary services" rendered by an attorney and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1).

In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including --

- (A) the time spent on such services;
- (B) the rates charged for such services;
- (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of a case under this title;
- (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue or task addressed and
- (E) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Id. (emphasis added). The court is only aware of one North Carolina decision concerning an award of attorneys' fees under amended Section 330(a). In In re Pineloch Enterprises Inc., 192 B.R. 675, 677 (Bankr. E.D.N.C. 1996), counsel for the debtor sought

the court's approval of a flat fee of \$5,000.00. In determining an appropriate fee, the court noted a number of factors to be considered along with the considerations specified in Section 330(a). Id. Attorneys' fees awarded in similar cases was one such factor listed by the court. Id.

In the case at bar, the Bankruptcy Court accepted testimony from R. Keith Johnson, a local bankruptcy attorney. Mr. Johnson testified concerning other fee applications which had been approved by the Bankruptcy Court in the Western District of North Carolina. As the court noted in In re Pineloch, such testimony is relevant in fashioning an attorneys' fee award. Although Section 330(a) does not specifically list fee awards in similar cases as a factor that the court "shall" consider, Section 330(a) contains a non-exclusive list of considerations. In enacting this statute, Congress clearly recognized that it was not in a position to anticipate and address all pertinent factors in evaluating a fee petition. Hence, it left the bankruptcy court with discretion in determining the relevant criteria in any given case.

In admitting the testimony of Mr. Johnson, the Bankruptcy Court properly recognized that other fee awards in the Western District of North Carolina were relevant to evaluating Appellee's fee application. Such evidence promotes harmonious decisions and fosters standards that practitioners in this district may rely upon. The Bankruptcy Court neither erred nor abused its discretion in allowing Mr. Johnson's testimony.

IV. Allowance of Fee Petition

Finally, Appellant argues that the Bankruptcy Court abused its discretion in allowing Appellee's application for attorneys' fees and expenses. Appellant contends that the entries on Appellee's fee application contain insufficient descriptions and improper "lumping" of services.

In order to receive an award of attorneys' fees and expenses, an applicant must establish that the requested amount is "reasonable compensation" for "actual, necessary" services or expenses. 11 U.S.C. § 330(a). In general, the bankruptcy court enjoys broad discretion in determining whether the proposed fees and costs are reasonable. In re Ward, 190 B.R. 242, 246 (Bankr. D. Md. 1995) (citations omitted). However, a number of courts have either refused to approve or have substantially reduced fees where services have been lumped together in a single entry. See e.g., id.; In re Poseidon Pools of America, Inc., 180 B.R. 718, 731 (Bankr. E.D.N.Y. 1995); In re Office Prods. of America, 136 B.R. 964, 976 (Bankr. W.D. Tex. 1992). In addition, courts have required that a claimant "justify its charges with detailed, specific, item-by-item documentation." In re Poseidon, 180 B.R. at 729 (citations omitted). Where services are inadequately detailed or excessively lumped, the court cannot determine from the petition whether the services were reasonable or necessary.¹ Id.

¹ On March 1, 1996, the United States Bankruptcy Court for the Western District of North Carolina adopted "Guidelines for Compensation and Expense Reimbursement of Professionals" ("Compensation Guidelines"). The purpose of the Compensation Guidelines is to assist parties in providing information necessary for the court to make the determination of reasonable and necessary compensation as outlined by Congress. Unlike the United States

Of course, in some cases where there is lumping and inadequate documentation, the court may be able to fashion an award of attorneys' fees and expenses based upon supplemental evidence presented by the claimant. As stated, the bankruptcy court enjoys broad discretion in determining an award of attorneys' fees under Section 330(a). Thus, where there is testimony by the claimant as to the particular services rendered, such testimony may support an award of attorneys' fees even though the petition is on its face deficient.

In the case at bar, Appellee's fee application contains a number of services and tasks which are "lumped" together into one time entry. Most of the services documented are vague and undetailed. For example, Appellee seeks reimbursement for 3.25 hours of services rendered on June 5, 1995. Appellee describes its services on this date as follows:

Telephone conference with Don House; telephone conferences with client; conference with A. Durham; conference with J. Bagwell; draft letter to client

Not only are numerous services lumped together in this entry, but Appellee fails to provide the court with any information concerning the nature or purpose of the services rendered. There is simply no way for the court to ascertain from this entry whether the services

Sentencing Guidelines, the Compensation Guidelines are not requirements for the court or the parties. The ultimate determination of reasonable attorneys' fees and expenses lies within the sound discretion of the Bankruptcy Court. However, practitioners in the Western District of North Carolina are strongly encouraged to look to the Compensation Guidelines for assistance in submitting a fee application. Following these Guidelines should reduce objections as to the fee applications and result in the conservation of judicial resources.

were necessary or reasonable. Unfortunately for Appellee, the June 5, 1995 time entry is typical of the majority of entries on Appellee's application. Consequently, the application alone is insufficient to support the Bankruptcy Court's award of attorneys' fees and expenses in this case.

Nevertheless, at the November 1995 hearing, the Bankruptcy Court exercised its authority to supplement the fee application with testimony from Appellee. Mr. Travis Moon, an attorney with Appellee, testified concerning the nature of the services provided by Appellee to the Debtor. On the basis of Mr. Moon's testimony, the fee application, and Mr. Johnson's testimony concerning local practice, the Bankruptcy Court allowed the fee application. Given its broad discretion in this domain, this court does not believe that the Bankruptcy Court's determination is clearly erroneous.

IT IS THEREFORE ORDERED that the Bankruptcy Administrator's appeal is **DENIED**. Counsel in the Western District of North Carolina are hereby placed on notice that a petition for attorneys' fees and expenses pursuant to 11 U.S.C. Section 330(a) should contain sufficient detail to permit a meaningful evaluation by the court.

THIS the 24th day of April, 1996


GRAHAM C. MULLEN
UNITED STATES DISTRICT COURT JUDGE